91-624

NO. _____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

OCTOBER TERM, 1991

JIMMIE ALEXANDER, Petitioner

vs.

LOS ANGELES COUNTY, and THE LOS ANGELES COUNTY CIVIL SERVICE COMMISSION, Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JIMMIE ALEXANDER
P.O. BOX 44548
Los Angeles, CA 90044

(213) 758-7881
In Propria Persona

QUESTIONS PRESENTED FOR REVIEW

1. Did the Los Angeles County Assessor's Personnel Office violate Petitioner's due process rights where it terminated a 17-year County employee without a hearing?
2. Did the Los Angeles County Civil Service Commission abuse its power and discretion when it denied a 17-year County employee a hearing?
3. Was the Los Angeles Superior Court Judge GEORGE M. DELL legally correct when he stated there was no abuse of power and discretion by the Civil Service Commission?
4. Was Judge DELL legally correct when he stated Petitioner was not terminated?
5. Was Superior Court Judge DELL correct when he stated in the Findings of Fact and Conclusions of Law that Petitioner was not entitled as a matter of right to an evidentiary trial-type administrative hearing before the Civil Service Commission to challenge his implied resignation?

6. Was Judge DELL correct when he stated Petitioner bore the burden of proof to demonstrate his failure to obtain authorization to be absent was excusable or justified (Baker v. Wadsworth)?

7. Was Judge DELL correct when he stated the Medical Verification form should have been sent to the Personnel Office, even though the form stated it was not to be sent to the Personnel Officer nor to become a part of a personnel file?

8. Did Judge DELL know the difference between "Verification" and "Authorization"?

9. Did Judge DELL make his decision based on racism or the laws?

10. Was the U.S. District Court Judge DAVID KENYON correct when he stated the state Superior and Appellate Courts had found that Petitioner was not discharged but had impliedly resigned and was therefore not entitled to a hearing as a matter of right? No where in the above statement did Judge KENYON say that the State Courts had complied with the due process laws. Was

Judge KENYON just rubber-stamping because Petitioner is a Black litigant?

11. Why did Judge KENYON refuse to rule on Petitioner's complaint of JULY 30, 1982 which stated "Complaint for Declaration that Section 33 of the Administration Code is Unconstitutional?

12. Why did Judge DAVID KENYON refuse to disqualify himself from this proceeding due to personal bias and prejudice?

13. Why did Judge KENYON refuse to disqualify himself after Petitioner repeatedly informed him and other judges that he was bias and would not render a decision based on the merits of my case?

14. Why did Judge KENYON refuse to disqualify himself knowing that his friendship with former Superior Court Judge DELL would prevent him from making a decision based on the merits of the case? (Incredible!)

15. Why did Judge KENYON use collateral estoppel/res judicata as a crutch to deny Petitioner justice and fair play?

16. Why did Judge KENYON disregard the decisions of the U.S. Supreme Court and other appellate courts to determine collateral estoppel and res judicata should be used judiciously?

17. Did Judge KENYON realize preclusion was not intended to prevent a person from having his day in Court?

18. Did Judge KENYON realize no decisions have been made on Petitioner's case based on the merits of the case?

19. Did Judge KENYON realize in order to use collateral estoppel and res judicatio a prerequisite is the full and fair opportunity to litigate?

20. Why did Judge KENYON make the following Statement: "Plaintiff should not file any additional complaints based on claims already adjudicated against defendants without prior approval of the Court." Where does Judge KENYON think he is living, in South Africa?

21. Why did Judge KENYON try to ignore or cover-up the fact that the defendants'

attorneys violated the Code of Professional Conduct by using a statute that had been ruled unconstitutional for approximately 18 months?

22. Defendants filed a brief for Appellees in Opposition June 7, 1984, in the U.S. Supreme Court, the statute was ruled unconstitutional August 1983, why did the defendants' attorneys fail to inform the Court about this fact?

23. Why to this day in their brief or motions to the U.S. District Court and the Appeals Court have they not found it necessary to explain why Los Angeles County Counsel DE WITT W. CLINTON, HALVOR S. MELOM and DONOVAN M. MAIN used a statute for approximately eighteen months after it had been ruled unconstitutional?

24. Do defendants' attorneys feel they can violate the Code of Professional Conduct with impunity?

25. Why is there a difference of opinion by the Ninth Circuit Panels. One Panel stated in its decision dated March 31, 1989,

"Alexander timely appeals", and a different panel on October 22, 1990, states res judicata precludes re-litigating claims previously rejected?

26. In what Court can anyone state Petitioner received a judgment based on the merits of the case?

27. Why are the federal courts condoning the kangaroo court of the Los Angeles Superior Court Judge GEORGE M. DELL and District Court Judge DAVID KENYON?

28. Why was a material point of fact or law overlooked in the decision?

29. Why did Circuit Judge BEEZER tell Petitioner not to say anything "that might hurt our case"? Judge BEEZER made the statement when Petitioner was telling the Court at the hearing of October 2, 1990, about Los Angeles County's practice of racism. The documents were part of the Court's file to prove this.

30. Did Judge BEEZER think Petitioner is a mind reader?

31. Why did the Panel in its Order of October 22, 1990 cite two cases that have nothing in common with Petitioner's case as grounds to affirm the District Court's decision?

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NO. _____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

OCTOBER TERM, 1991

JIMMIE ALEXANDER, Petitioner

vs.

LOS ANGELES COUNTY, et al., Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, JIMMIE ALEXANDER, also known as JIMMY ALEXANDER, respectfully prays that a Writ Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit refusing to vacate the District Court Order which stated Petitioner's claims are barred by the principles of res judicata and collateral estoppel. No decision on Petitioner's case based on the merits of the

case has been made, due process right to a hearing violated and no full and fair opportunity to litigate.

OPINIONS BELOW

The opinion of the Court of Appeals is reported as Jimmy Alexander vs. Los Angeles County Memorandum (9th Cir. October 22, 1990) and appears in Appendix A to this Petition. The unpublished written opinion of the District Court for the Central District of California appears in Appendix B to this Petition.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on October 22, 1990. A timely Petition for Rehearing was filed on November 5, 1990. The Court of Appeals' Denial of the Petition for Rehearing was issued on April 16, 1991, and is set forth in Appendix C. This Court's jurisdiction is invoked under Title 28, U.S.C. Sec. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV to the United States Constitution is set forth in Appendix D.

STATEMENT OF THE CASE

The United States District Court, Central District of California, Central Division, had jurisdiction pursuant to Title 42 U.S. Section 1983.

This litigant, a 17-year Los Angeles County Civil Service employee, was terminated by the use of Section 33 of Administrative Code No. 9801. This litigant was denied a hearing by the Civil Service Commission because they stated he had impliedly resigned his position with the County. The Defendants' attorney states to the United States Supreme Court in their Brief in Opposition to Appellant's Writ of Certiorari dated June 7, 1984, that a California trial court held that this Appellant was not discharged but that he instead had impliedly resigned from his position. They say this under California decisional law. In Baker v. Wadsworth (1970) 6 Cal.App.3d 253, 263. On page 5 of Defendants' Brief to the United States Supreme Court, they state "Alexander was not discharged. Alexander impliedly resigned his position and in doing so abandoned his right to

continued employment." (See Baker v. Wadsworth, supra, 253, 262-263.) They continued, ". . . the procedural safeguards recognized in Skelly are therefore not applicable, and the only issue is whether the Commission acted within its discretion in denying his petition for a hearing."

PLEASE NOTE: THE DEFENDANTS' ATTORNEYS ARE STILL TALKING ABOUT IMPLIED RESIGNATION UNDER BAKER V. WADSWORTH (1970) 6 Cal.App.3d 253 263, THEY CONTINUE TO TALK ABOUT THIS EVEN IN JUNE 1984, WHEN THEY KNEW THE CASE, ORDINANCES AND CODE ENACTED AS A RESULT OF THE WADSWORTH CASE HAVE BEEN RULED UNCONSTITUTIONAL AS APPLIED. THIS RULING WAS MADE IN THE ZIKE V. STATE PERSONNEL BD. 145 Cal.App.3d 817; 193 Cal.Rptr. 766 [Aug. 1983].

The Defendants' Attorneys know this case had been ruled unconstitutional as applied but they did not inform the Federal Courts according to the Rules of Professional Conduct - R-7-105 Trial Conduct.

In presenting a matter to a tribunal, a member of State Bar shall:

"(1) Employ, for the purpose of maintaining the cause confided to him, such means only as are consistent with truth, and shall not seek to mislead the judge, judicial officer or jury by an artifice or false statement of fact or law. A member of the State Bar shall not intentionally misquote to a judge or judicial officer the language of a book, statute or decision; nor shall he, with knowledge of its invalidity and without disclosing such knowledge, cite as authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional.

Federal Civil Judicial Procedures and Rules.

Rule 46 Attorneys (b) **Suspension or Disbarment.**

"When it is shown to the Court that any member of its bar has been

suspended or disbarred from practice in any other court of record, or has been guilty of unbecoming a member of the bar of the Court, the member will be subject to suspension or disbarment by the Court."

1. Section 33 of Ordinance No. 9801, pursuant to which Appellant was terminated, was ruled constitutional.

2. Whether the Superior Court erred in not finding an abuse of discretion and power in the act of the Civil Service Commission, which denied the request of Appellant herein, a 17-year Civil Service employee, for a hearing based on the decision of the Los Angeles County Director of Personnel that Appellant's absence from his position as Real Estate Appraiser from July 5, 1977 to September 6, 1977, were not for medical reasons beyond his control.

3. Whether the failure of the Director of Personnel to give Appellant notice of the charges and allow Appellant a hearing before dismissing Appellant constituted a denial of procedure of due process and resulted in an

invalid discharge.

4. Whether the Administrative decision affecting the Appellant's legitimately acquired or vested right of employment after 17 years of service was too important to the individual's life to relegate it to exclusive Administrative extinction without according that individual a hearing and the right to face and question the Appellant's accuser and a full independent judicial review if necessary.

5. Appellant had contended since the wrongful termination that Section 33 of Ordinance No. 9801 was unconstitutional and if ruled constitutional could not be used against a 17-year public employee with property rights.

6. The Superior Court (Judge Dell) and the Appellate Department (Court of Appeal) used the County Counsel's reply briefs as substantial evidence and failed to exercise its independent judicial review power of the County Assessor personnel officer and the Civil Service Commission.

7. Section 33 of the Administrative Code Ordinance 9801 is unconstitutional on its face

or as applied to Appellant, denied Appellant due process.

8. The Trial Court erred in finding the Civil Service Commission did not abuse its discretion when they denied Appellant a hearing.

9. Section 33 of the Administrative Code deprives an employee of a reasonable opportunity to be heard, as guaranteed by the due process clause of the Fifth and Fourteenth Amendments of the United States Constitution. An employee's right to a hearing is a fundamental right, particularly when a property right is involved. It derives from constitutional guarantee that property not be taken without due process.

10. Appellant is contending that his termination was due to fraud, undue influence, and discrimination by a racist.

11. Personnel officer and the Civil Service Commission violated the Eighth Amendment of cruel and unusual punishment imposed without due process.

12. When statutes delegate power with inadequate protection against unfairness or favoritism, and when such protection can easily

be provided, the reviewing court may well insist upon such protection or invalidate the administrative code or legislation.

13. Appellant's termination was a wrongful discharge.

14. Appellant's termination was due to racism.

15. County counsel HALVOR S. MELOM and JOHN H. LARSON knowingly lied to the Courts, including the United States Supreme Court and violated Rules of Professional Conduct Rule 7-105.

16. Abuse of power and discretion by Los Angeles County Civil Service Commission.

17. Termination was due to extrinsic fraud.

18. Defendants' attorneys violated the Codes of Professional Conduct, State and Federal.

19. Judge DAVID KENYON should be disqualified because Judge KENYON is a racist. If the Court remands my case to Judge KENYON, there is no way that I will have a full and fair opportunity to present my case even with the

jury.

20. Notice of Motion and Motion to Dismiss and for Sanctions -- Date: July 10, 1989; Time 10:00 A.M.; Courtroom 16; before Judge RICHARD A. GADBOIS, JR. Defendants' attorneys continued the Motion to Date: August 28, 1989, Time: 9:00 A.M. before Judge DAVID KENYON. There is no record to show that Judge GADBOIS continued or dismissed the motion. See Docket Sheet in Excerpts of Records, page 52.

21. On July 26, 1989, paper was filed by Judge KENYON, entitled **ORDER RE COURT GUIDELINES AND TRIAL PREPARATION**.

22. On August 18, 1989, Judge KENYON filed, **ORDER RE DEFENDANTS' MOTION TO DISMISS**. Was Judge KENYON playing a game with Appellant?

23. On March 31, 1989, a Memorandum was filed by a Ninth Circuit Panel consisting of **CANBY, WIGGINS and O'SCANNLAIN**, Circuit Judges. The Court affirmed the dismissal because of improper service of Summons and Complaint, the Court put special emphasis on **ALEXANDER TIMELY APPEALS**.

24. Public employees having a property

right in continued employment cannot be deprived of that right by the State without due process. U.S.C.A. Amend. 5 & 14.

25. Appellant had a significant property interest in his continued employment as a public employee.

26. Appellant had a property interest in salary payment withheld, accrued vacation time, and accrued sick leave. See Pages 32-35 of Addendum.

27. Judge KENYON is trying to cover-up the fact that the Defendants' attorney violated the Codes of Professional Conduct by using a statute fifteen (15) months after it had been ruled unconstitutional. The Court of Appeals stated: "Alexander's other contention addressing the merit of his underlying claim. Because the District Court lacked personal jurisdiction over the Defendants, the contention does not warrant discussion." **NOTE:** Judge KENYON had jurisdiction this time.

28. It is of course true that changes in the fact essential to a judgment will render collateral estoppel inapplicable.

29. 42 U.S.C. Sec. 1983 provides in part:

> "Every person who, under the color of any statute, ordinance, regulation, custom, or usage, of any Stat. . . . subject or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the injured in an action at law, suit in equity, or other proper proceeding for redress."

30. Defendants and their attorneys have acted maliciously, oppressively, and wantonly.

31. No decision on the merit of the case.

32. In City of West Branch, Michigan et al., 466 U.S. 284 (1984), the court states:

"Because Sec. 1983 creates a cause of action, there is, of course, no question Congress intended it to be judicially enforceable. Indeed, as we explained in Mitchum v. Foster, 407 U.S. 225, 242 (1972) '(t)he very purpose of Sec. 1983 was to interpose the Federal Courts between the States and the people, as guardians of people's federal rights -- to protect the people from unconstitutional action under the color of State law.'"

33. Judge KENYON's order awarded attorney fees to Defendants' attorneys. In his order, Judge KENYON stated: "Defendants should submit a declaration specifying such fees, and proposed order, within 14 days hereof." According to Webster's Dictionary, "hereof" means "upon receipt", the federal courts usually have a specific number of days for a litigant to submit papers to the Court, how would Judge KENYON know when Defendants received the Order? (Incredible)

34. The Defendants filed a Declaration for attorney fees for $558.00. See Excerpts of Records, page 18.

35. Judge DAVID KENYON should be disqualified from hearing any Black person's case.

36. The Ninth Circuit Panel should subpoena HALVOR S. MELOM, DE WITT CLINTON and DONOVAN M. MAIN and put them under oath for violating professional conduct (rules) by knowingly using a Statute that had been ruled unconstitutional fifteen months before.

37. I am filing a complaint with the State Bar of California, San Francisco.

38. I have also informed the United States Supreme Court about this violation, they have informed me of the procedure to follow.

Appellant filed a new and independent action November 18, 1987. The new action was filed seeking justice in the Court, because the Appellant had been wrongfully terminated due to racism, violation of due process, abuse of power and discretion by Los Angeles County Civil Service Commission when they denied a 17-year Civil Service employee a hearing.

The statute Los Angeles County used for the wrongful termination was ruled unconstitutional

by the California State Appeal Court and affirmed by the California Supreme Court.

1. On or about July 5, 1977, Appellant JIMMIE ALEXANDER, pursuant to the Assessor's Department Handbook No. 5207-1-3, notified the Supervising Control Clerk, FE FENDENCIA, of Regional Office #9, by telephone that he was unable to return to work as of the same day because of a stomach illness.

2. On July 15, 1977, the Personnel Officer, ALFRED F. MUIR, acknowledged in the letter dated July 15, 1977, requested a physician's certificate to be mailed to the Director, Occupational Health Service . . . pursuant to Section 78.07 of the Administrative Code.

3. On August 25, 1977, the Personnel Officer, ALFRED F. MUIR, mailed another certified letter notifying the Appellant ALEXANDER that (1) from August 24, 1977 he would be carried on the payroll as absent without pay, and (2) sick leave would not be applied until receipt of medical verification of illness, citing Section 78.07 of the

Administrative Code.

4. On August 29, 1977, the Appellant requested the physician's certificate from his physician, BARBARA REVE, M.D., at Kaiser Hospital, and mailed the physician's certificate by certified mail to the Occupational Health Service. The physician's certificate dated August 29, 1977, was received and acknowledged by the Occupational Health Service on September 6, 1977.

5. On the following day, August 30, 1977, the Personnel Officer, ALFRED F. MUIR, again sent a certified letter to Appellant stating, "If you do not provide us with a medical verification of your absence by Tuesday, September 6, 1977, you will be deemed to have resigned your position. If for any reason you cannot provide us with medical verification, you must obtain official authorization to be absent."

6. Appellant requests the Court to take judicial notice that September 5, 1977, was Labor Day which was recognized as a Federal and State holiday; therefore, no mails were

delivered or received on that day.

7. On September 6, 1977, ALFRED F. MUIR notified the Appellant that he was deemed to have resigned from the County of Los Angeles under Section 33 of the Administrative Code of the County of Los Angeles because he did not submit the requested medical verification of his absence.

8. The Appellant, prior to the Personnel Officer's letter of August 30, 1977, had fully complied with the Department's Handbook Policies and Regulations by giving notice of illness on July 5, 1977, and submitting a physician's certificate with verification of his illness personally on August 29, 1977. Said verification was received on or before September 6, 1977.

9. On September 6, 1977, the Los Angeles County Department of Real Property Appraisals, through the Personnel Officer, ALFRED F. MUIR, unconstitutionally, in violation of California Government Code 19500, Note 5 of the 1978 Supplement, and the Civil Service Rules and Regulations, applied the Los Angeles County

Administrative Code, Section 33, and deprived the Appellant of the property rights in the continuation of his employment and the vested interest in his retirement benefits and board hearing under California Government Code §§ 31721, 31723, 31724 and 31725, in violation of the 1937 Retirement Act.

10. Pursuant to Civil Service Commission Rules 5.02, and in compliance with the Director of Personnel MARTIN GOLD's letter of October 20, 1977, to request Civil Service Hearing within 20 days, the Appellant, through his legal representative on October 31, 1977, requested a hearing.

11. On December 21, 1977, the Civil Service Commission had its meeting, resulting in the following undisputed facts:

a. The Civil Service Commission, through Commissioner FRANK A. WORK, suggested that without prejudice the Appellant should request reinstatement to prevent additional cost to the taxpayers in a Superior Court litigation.

b. The Appellant withdrew his

petition on the same date. On December 17, 1977, pursuant to the Civil Service Commission's request, the Appellant requested reinstatement.

c. On January 16, 1978, the Director of Real Property Appraisals acknowledged his compliance with Section 78.07 of the Administrative Code and requested the answer to six (6) interrogatories before giving an unequivocal answer to the request for reinstatement.

d. On January 22, 1978, the January 16, 1978 letter was acknowledged with a request by Appellant's counsel for an unequivocal answer.

e. On January 31, 1978, the Director of Real Property Appraisal (of Los Angeles County) notified Appellant of an unequivocal rejection.

f. On February 10, 1978, the Appellant, through his legal representative, requested a re-set of his request for a Civil Service Hearing under Rule Civil Service Commission S.20.

Appellant's original Complaint was filed November 18, 1987. Appellant had the Summons and Complaint served on Defendants according to the local rules.

The Summons and Complaint were legally served on Defendants' County Counsel office December 3, 1987. Defendants failed to file an Answer to the Complaint within 20 days after service of the Summons and Complaint, therefore, Appellant filed for a default by the Clerk F.R.C.P. 55(a) and the default was filed January 25, 1988.

Appellant filed a Motion for Default Judgment by the Court which was set for hearing April 4, 1988. On April 29, 1988, Judge DAVID V. KENYON dismissed Appellant's Complaint and denied Appellant's Motion for Default Judgment pursuant to Rule 4(i) F.R.C.P.

After Judge KENYON denied Appellant's Motion for Default Judgment, on May 10, 1988, Appellant filed a Notice of Appeal to the Ninth Circuit Court.

On March 31, 1989, the Court of Appeals affirmed Judge KENYON's decision. The Court

stated at a hearing on April 4, 1988 that the Court found that the Complaint was not properly served and granted the County's Motion to Dismiss. **ALEXANDER timely appeals.**

The Appellee's reply brief to the Court of Appeals still does not deny they used a California statute that had been ruled unconstitutional during the hearing before the Court of Appeals and the Brief for Appellees in opposition to the U.S. Supreme Court -- NOTE: Appellant filed a Motion to Disqualify Judge DAVID V. KENYON from hearing this case due to his personal bias.

Defendants' attorney submitted affidavits made in bad faith concerning proof of service to the appellees.

Violation of Amendment XIV

The Defendants violated the Appellant's Fourteenth Amendment rights. This Amendment states, no state shall deprive any person of life, liberty, or property, without due process of the law, nor deny to any person within its jurisdiction the equal protection of the laws.

The Ninth Circuit Court of Appeals stated

in its Memorandum dated March 31, 1989, that although ALEXANDER's Complaint and briefs are not entirely clear, he apparently alleged that Los Angeles County Administration Code, Ord. No. 4099, the basis for his termination, violated the due process clause of the Fourteenth Amendment.

I was terminated pursuant to Government Code Section 19503, "Baker v. Wadsworth (1970) 6 Cal.App.3d 253, 262-263 Ordinance No. 9801, an Ordinance amending Ordinance No. 4099, the Administrative Code, Section 33; How effected."

The above ordinance was enacted to prevent strikes. The defendant used this Ordinance that was enacted to prevent strikes against a 17-year

Black Civil Service employee (wrongful termination due to racism).

ARGUMENT

This is clearly a case of the Defendants' Attorney violating the Rules of Professional conduct by refusing or failing to inform the Court that the statute used for the purpose of denying the Appellant a hearing had been ruled

unconstitutional six months before a petition for a rehearing was denied by the Ninth Circuit February 10, 1984. The Petition for Rehearing was denied November 26, 1984 which is about fifteen months after the Wadsworth and connecting codes were declared unconstitutional as applied by the Appeal Court (First Dist., Div. One) and affirmed by the California Supreme Court.

The Defendants' attorney, Halvor S. Melom, DE WITT, CLINTON and DONOVAN M. MAIN cannot say they did not know about the above ruling. Disciplinary action should be taken against Defendants' attorney for withholding the information that the statute had been ruled unconstitutional as applied and the lies in their Brief to the Courts.

The following will give you a good example how the racist Judge George M. Dell thinks. The following information is from the Reporter's Transcript:

> "Petitioner's Attorney Guidry states the correspondence submitted to the Petitioner, it indicated that all

physicians certificate in bold red letters on the right hand corner, it indicates: 'Please mail to the Occupational Health Service' and this is not to be placed in your personnel folder.

"THE COURT: Well, that is not precisely correct.

This is a typical example of the way the racist Judge Dell thinks.

I called Occupational Health Services, Mrs. Briggs at telephone No. (213) 974-1702 and she stated the Privacy Act is the Act that medical facilities operate under, Mrs. Briggs stated, I followed the correct procedure by sending the Verification to the Occupational Health Services. Mrs. Briggs also stated medical information is never sent to a personnel officer. Mrs. Briggs states the only thing that is sent to a personnel officer is a statement saying a person can return to work and if under certain restriction. Mrs. Briggs could not understand how there could be any question about the procedure. I suppose all of this informa-

tion is new to racist Judge George M. Dell.

Occupational Health Services is Los Angeles County Employees' Custodian of Medical Records.

Judge George M. Dell stated the petitioner did not send the Medical Verification to the personnel officer. Judge Dell undoubtedly has not heard of Privacy Act of 1974 (88 Stat. 1896 U.S.C. 552) As Amended Section 552 Records Maintained On Individuals.

This Appellant's case was lost when the Appellant's attorney walked into Judge George M. Dell's courtroom. We had three strikes against us before the attorney came to the bat:

1. Strike one - the racist personnel Judge George M. Dell;
2. Strike two - A Black person was the Appellant;
3. Strike three - The Appellant's attorney was a Black person.

This case has been a mockery of justice in the State Courts and the Federal Court. The Appellate Courts have failed to examine the legal aspect of the case and all pertinent facts to determine if Los Angeles Judge George M.

Dell's decision was made based on the merits of the case.

Some of the facts that should have been a red flag or something that would make a judge that abides by the Codes of Judicial Conduct.

CANON 1

A. A Judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Judge George M. Dell did not abide by the above Code of Judicial Conduct and other codes. Judge Dell's conduct and any judge that practices racism or condones racism erodes the public confidence in the judiciary.

Judge Dell stated there was no abuse of power and discretion by Los Angeles County Civil Service Commission when they denied a 17-year Civil Service Employee a hearing.

The right to a hearing is something a murderer, robber, rapist, traitor, prisoner, burglar and other violators of the law are entitled to -- a hearing and other due process according to the State and United States

Constitutional laws.

Judge Dell seems to think Black, law-abiding citizens are not entitled to a fundamental Constitutional right of a hearing, especially when a property right is involved, this is incredible.

This Appellant was employed by Los Angeles County as a Real Estate Appraiser. As a real estate appraiser most of my work was done in the field, in other words, it could be a day or even four or five days before I was in my regional office No. 9, located at 4909 Overland, Culver City, California. This is the office where my supervisor was located and the regional office clerk that the appraiser would notify by telephone when he was going to be out due to illness. The regional office would notify the payroll clerk at 500 West Temple Street, Los Angeles, California 90012. This building is known as the Hall of Administration, this is also the building where the County Assessor's personnel officer is located. The regional office clerk reports to the payroll clerk any vacation time taken and sick leave.

This Appellant informed the regional clerk that he was out due to illness July 5, 1977; Appellant had plenty of accrued sick leave. This Appellant still had carry-over vacation time for 1976.

Judge Dell and Defendants' Attorney stated that this Appellant was out without authorized leave. I suppose it is new to Judge Dell, but accrued sick leave is not authorized, it is sometimes verified, upon request. (See Appraiser Handbook).

Judge George M. Dell ruled that a person out on accrued sick leave could be terminated impliedly without a hearing by the Civil Service Commission. Judge Dell states Section 33 of Los Angeles Administrative Code pursuant to Baker v. Wadsworth (1970) 6 Cal.App.3d 253, 263; [85 Cal.Rptr. 880] give the County the right to impliedly terminate a person.

In Zike v. State Personnel Bd. 145 Cal.3d 817; 193 Cal.Rptr. 766 [August 1983], it states (excerpts from the above case):

"The Court held that application

of automatic resignation statute (former Gov. Code Sec. 19503) to the employee violated procedural due process by failing to provide adequate preremoval safeguards as required by California Supreme Court Decisional Law and Const., Art. 1 Sections 7 and 17."

Due Process - Application of the Automatic Resignation Statute (former Gov. Code Sec. 19503, now 19996.2) to a state employee who worked as a children's counselor at a school for the deaf violated procedural due process by failing to provide adequate preremoval safeguards as required by Decisional Law of California Supreme Court and Cal. Const., Art. I, Sections 7 and 15. The employee never intended to resign his position, which he had held for seven years (**NOTE:** this Appellant is a 17-year employee) and school authorities had no reason to believe he was voluntarily resigning since he had informed them of his intention to return to school late after his honeymoon. (**NOTE:** This Appellant was not late, this

litigant was on accrued sick leave.)

The crux of the dispute was whether the employee's absence was an "absence without leave". (NOTE: This Appellant was on accrued sick leave, therefore, there cannot be an "absence without leave", accrued sick leave use is not authorized.)

Appellant challenged the constitutionality of Section 19503, contending that the statute violates his rights to substantial and procedural due process and actual protection of the laws. Defendant, on the other hand, argues that no violation of due process has occurred and that the constitutionality of Section 19503 has been upheld by earlier decisions. (Wilson v. State Personnel Bd. (1980) 113 Cal.App.3d 312 [169 Cal.Rptr. 823] App. 454 U.S. 806 [70 L.Ed. 2d 75, 102 S.Ct. 79], Baker v. Wadsworth, supra, at 253, 265.

GOVERNMENT CODE SECTION 19503 AS APPLIED TO PLAINTIFF ZIKE WAS UNCONSTITUTIONAL SINCE IT

VIOLATED HIS RIGHTS TO PROCEDURAL DUE PROCESS.

Due process rights must be accorded to the valuable property rights of a state employee to continue in his position. (Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194 [134 Cal.Rptr. 197, 556 P.2d 297].

Under these circumstances -- where a factual dispute regarding the authority for absence is presented -- we think Government Code Section 19503 should not have been applied. Invoking the summary procedure of automatic resignation statute in such a situation violated the procedural due process guarantees of Skelly (cf. Curia v. Civil Service Com. (1981) 126 Cal.App.3d 994, 996 [179 Cal.Rptr. 476].

In Curia v. Civil Service Com., supra, 126 Cal.App.3d 994, the Court, while not specifically addressing the need for pre-removal safeguards, relied upon Skelly in holding that as a matter of constitutional due process, the employer must bear the burden of proof in establishing that the employee's absence was

without authorization. (**NOTE:** As stated before, accrued sick leave is not authorized.)

Because of the obvious harshness of automatic resignation statute and the absence of procedural due process protection therein (Skelly v. State Personnel Bd., supra, 15 Cal.3d 194), we think the use of Government Code Section 19503 should be strictly confined to those situations where absence without leave is admitted. (Wilson v. State Personnel Bd., supra, 113 Cal.App.3d 312, 314; Baker v. Wadsworth, 6 Cal.App.3d 253). (**NOTE:** Zike was forced to wait four months for a hearing but he got a hearing. This 17-year Civil Service employee was refused a hearing.)

The Court should take special note that Zike did not have any accrued leave of any type. This Appellant had plenty of vacation time and sick leave -- This is a clear cut case of racism. This is also a clear cut case to show that Judge Dell did not abide by the rules of law.

In other words, if Judge Dell knows the laws, he was not applying them fairly, he used a

double standard.

The California Supreme Court affirmed the Zike case in September 1983 and October 1983.

In Judge Dell's findings of fact and conclusions of law, the Judge and the racist defendants Attorney Halvor S. Melom state Appellant bore the burden of proof to demonstrate that his failure to obtain authorization to be absent was excusable or justified (Baker v. Wadsworth, supra, 6 Cal.App.3d at 263.)

Zike rules unconstitutional as applied this contention. The court states in Zike the burden of proof of unauthorized absence is on the employer as required by Curia v. Civil Service Commission, supra, 126 Cal.App.3d 944 (Skelly).

This Appellant was a Victim of Violent Crime burglary and robbery. This crime occurred August 11, 1973, at this time this Appellant was shot. The gunshot did some internal damage. During Appellant's stay at Kaiser Hospital, complications set in and Appellant was given only a fifty to fifty chance to live. Appellant had a lot of internal bleeding. Appellant had

to have a blood transfusion, they had to give Appellant eleven (11) pints of blood.

Prior to the time of this injury, Appellant had used approximately three sick days from 1960 until August, 1973.

Appellant was off from work on sick leave starting August 13, 1973 to March 8, 1984. During this period of time Appellant did not have any conversation by telephone or in person with the personnel officer, as Appellant stated before the regional clerk informs the payroll clerk at the personnel office when a person is out sick or on vacation. The only people that this Appellant had contact with was at my regional office. There was no such thing as anyone authorizing my sick leave because it was accrued -- Appellant was paid for every day that he was off during this period of time.

When it was time for Appellant to return to work with the doctor's permission, the doctor gave Appellant a slip to carry to Occupation Health Services and the doctors at Occupation Health Service looked Appellant over and gave him the slip stating is was okay to return to

work. The day that Appellant returned to work he gave the slip to the Clerk and she sent it to the personnel office.

George M. Dell and the racist Defendants' Attorney Halvor S. Melom tried to make a big deal out of the fact that during the two months Appellant had not contacted the personnel officer. All of Appellant's communication was with his supervisor and the Regional Clerk at this regional office.

From August 13, 1973 to March 8, 1984, Appellant did not have any contact with the personnel officer. Appellant was out on sick leave nearly seven months. During this seven months Appellant had no contact with the personnel officer or the personnel office. As Appellant has stated, his contact was with the regional office. On approximately September 1, 1974, this Appellant had a heart attack while working in the field.

Appellant was following the procedure of the Appraiser's Manual, he had his relative to notify the regional office clerk that he would be out sick.

Appellant was out from September 1, 1974 to November 1, 1974. And December 24, 1974 to November 12, 1976, the only contact that Appellant had with the Assessor's Office was the regional office clerk and his supervisor.

When it was time for Appellant to return to work the Kaiser doctor showed the dates that Appellant had been out due to the illness and the day that Appellant could return to work. During the period of time Appellant did not have any contact with the racist personnel officer Alfred Muir. Appellant was out two months on this occasion. Appellant received 100 percent or partial pay for every day that he was out.

So you can see there is no such thing as authorized accrued sick leave, it becomes authorized when you do not have any accrued sick leave.

After reading the Reporter's Transcript, Appellant was not surprised to read that Judge Dell said sick leave had to be authorized.

To hear and read that U.S. District Judge David V. Kenyon make essentially the same statement was somewhat of a surprise. One would

normally think that most United States judges would rule on a case based on the laws and the merits of the case. Judge Kenyon did not do that in my case. It is just about as bad to condone racism as it is to be a racist. Due to the fact that Judge David V. Kenyon did not rule on the case based on the merits of the case and the constitutional laws, he is condoning the racism of former Los Angeles Superior Court Judge George M. Dell, the Defendants' attorneys and the racist personnel officer.

I am going to quote some additional excerpts to prove that Judge Kenyon and the Ninth Circuit Court of Appeals also did not rule on the case based on the State and Federal constitutional laws. This is a case where the Appellate Courts, State and Federal followed the leader. Judge George M. Dell, the racist judge, was the wrong leader to follow if you wanted to rule on the case based on the laws and administering justice according to the laws.

Some cases to prove that a double standard was used by Judge George M. Dell.

A white Zoo Director was fired by his

supervisor because they say he was guilty of five counts of improprieties and he was charged with appropriating City property for personal use.

This white employee was allegedly fired for cause but he was reinstated by the Court.

This Appellant was not terminated for cause but the courts have seen fit to uphold the terminations. The white employee received justice because he is white and he appeared before a judge that judged the case based on the merits of the case, of course, I understand if the Zoo Director had been Black, there is a good chance the courts would uphold the firing.

This was another case where the Board of Supervisor terminated the department head of the Probation Department because they stated he was unfit. The courts reinstated this department head that was considered unfit, of course, this employee is white.

The County Counsel Halvor S. Melom used C.C.P. 170.6 to prevent a fair minded judge from hearing a case when they are using racism to terminate a Black employee.

The County Counsel's office would use this tactic to disqualify Superior Court Judge Jerry Pacht. They did not want a judge that was going to rule on the case based on the merits of the case.

I am going to cite some excerpts from some additional cases to prove that this Appellant has not received a full and fair opportunity to litigate in the State and Federal Courts. The courts have not ruled on this case based on the merits of the case, justice, fair play and an application of the laws to this case based on the facts and not based on the findings of a racist former superior court judge -- Judge Dell.

Excerpts from Harris v. State Personnel Bd. 170 Cal.App.3d 639; 216 Cal.Rptr. [July 1985].

A state university clerical employee who, through legal proceedings, gained reinstatement after the University terminated him for inadvertent absence without leave (due to disability) filed a supplemental Petition for Mandamus seeking an order for back pay.

Finally, the Court held that, regardless of

the employee's tenure status, the University's termination of the employee without notice and an opportunity to be heard violated procedural due process rights.

On February 26, 1979, he sustained a work-related back injury for which he was treated at Kaiser Permanente Hospital. He was found to be temporarily disabled for the period from February 26, 1979 to May 14, 1979, by his Kaiser physician. He was provided a return to work order for May 14, 1979. (**NOTE:** This case is similar to this Appellant's, Appellant is a member of Kaiser also).

Our Supreme Court in determining the constitutionality of the disciplinary and punitive provision of the California Service Act (Gov. Code Sec. 18000, et. seq.) (Skelly v. State Personnel Bd. (1975) 15 Cal.2d 194 [124 Cal.Rptr. 14, 539 P.2d 774]), set forth certain maximum protection that must be afforded permanent Civil Service employees as a matter of procedural due process. Even assuming that Appellant serves at the will of his employer and assuming that he may be terminated without

cause, he is nonetheless entitled to certain minimum procedural due process prior to dismissal.

The situation in the case before the bench is notably similar to that in Zike v. State Personnel Bd. (1983) 145 Cal.App.3d 817 [193 Cal.Rptr. 766].

It was the view of the Court that the automatic resignation as of the statute violated procedural due process in that it failed to provide adequate preremoval safeguard as is mandated by California Constitution, Article I, Sections 7 and 15, and Skelly v. State Personnel Bd., supra, 15 Cal.3d 194. In this case at bench, as in Zike, there was no factual basis upon which to conclude Appellant was abandoning his employment. Appellant had been employed almost three years and had been on disability for over two months. The employer had knowledge that he had been treated by the doctors for the State Compensation Insurance Fund as well as Kaiser Permanente.

(NOTE: This case is similar to this litigant's case as this Appellant was being

treated by Kaiser Permanente and the Los Angeles County Assessor's personnel office knew this Appellant had been a victim of a violent crime and had a heart attack, of course, the main difference is that this litigant is Black and his case was being judged by a racist judge (George M. Dell) and a Civil Service Commission that did not grant this Appellant a due process hearing.

Excerpts from Phillips v. State Personnel Bd. 184 Cal.App.3d 651; ___ Cal.Rptr. [Aug. 1986).

> "Because a public employee holds a recognized property right in his continued employment, due process protects that right and a public [184 Cal.App.3d 352] entity employer cannot discharge a permanent employee without complying with procedural due process requirement."

(Id.)

Moreover, an employee is entitled to post-termination hearing if a full hearing was not afforded him prior to termination, and it

includes the right to appeal personally before an impartial decisionmaker, to confront and examine adverse witnesses, to present favorable evidence, and to be represented by counsel. (This Appellant did not receive the above due process.)

The Court concluded that the taking of punitive action against an employee without affording the employee any prior procedural rights violates the due process guarantee (Id., at p. 215).

Recently, the United States Supreme Court, in Cleveland Bd. of Educ. v. Loudermill (1985), 470 U.S. - [84 L.Ed.2d 494, 105 S.Ct. 1487] reached a similar conclusion, holding that the due process clause of the United States Constitution requires that a government employee who has a significant property interest in his employment must be given an opportunity for a hearing before he is discharged. (Id., at p. - [84 L.Ed.2d 494 at p. 506].

At minimum this right includes the right to appear personally before an impartial decision-maker, to confront and examine adverse

witnesses, to present favorable evidence, and to be represented by counsel. (Los Angeles County Employees' Assn. v. Sanitation Dist. No. 2 1979, 89 Cal.App.3d 294, 299 [152 Cal.Rptr. 415]).

(NOTE: This Appellant did not receive any of the required due process rights. The Civil Service Commission violated their own rules by denying this Appellant a hearing. The Civil Service Commission is supposed to abide by their own rules and the administrative rules. They did not do that in the instant case. Appellant thinks the color of his skin was the main reason they denied him a hearing. Appellant believes if he had been white, the Civil Service Commission would have afforded him a pre-termination hearing. In fact, Appellant feels his case never should have gone to the Civil Service Commission because he followed the established procedure that an employee is to follow when he/she is out sick. They are able to plant it in the head of the racist former Superior Court Judge George M. Dell that sick leave is authorized, Judge Dell totally disregarded the fact that this Appellant had

plenty of accrued sick leave and vacation time.

The hearing in Judge Dell's court was an Ex Parte hearing and Kangaroo Court. Judge Dell had his

own apartheid in a United States courtroom and not South Africa.

Moreover, the burden of proof is up to the employer to show the absence was unauthorized or that the employer reasonably believed an abandonment had occurred (Curia v. Civil Service Comm. (1981) 126 Cal.App.3d 994, 1008-1009 [179 Cal.Rptr. 476]).

In this case, Phillips does not admit he was absent without leave. He had informed his supervisor of his illness.

[This Appellant notified the regional office clerk according to Handbook.]

Excerpts from Magallanes v. Superior Court 167 Cal.App.3d 878; 213 Cal.Rptr. [May 1985].

In order to justify punitive damage, the defendant must be guilty of oppression, fraud, or malice. (Civ. Code Section 3294).

Oppression means subjecting a person to cruel and unjust hardship in conscious disregard

for that person's rights.

[Los Angeles County, Los Angeles County Civil Service Commission and the Los Angeles County Counsel office are guilty of the above in this Appellant's case. He must act with intent to vex, injure or annoy, or with a conscious disregard of plaintiff's rights. (Silberg v. California Ins. Co. (1974) 11 Cal.3d 452 [113 Cal.Rptr. 711, 521 P.2d 1103]).

Excerpts from Anderson v. City of Bessemer City N.C. cite as 105 S.Ct. 1504 (1985).

Federal Courts - Questions which the Supreme Court must answer is whether interpretation of facts by Court of Appeal was clearly erroneous, but whether District Court's findings, was clearly erroneous. Fed. Rules Civ. Pro. Rule 52, 28 U.S.C.A.

> "Public employees having property right in continued employment cannot be deprived of that property right by the state without due process. U.S.C.A. Const. Amends. 5, 14.
>
> "An essential principle of due process is that a deprivation of life,

liberty or property be preceded by notice and opportunity for hearing appropriate to the nature of the case. U.S.C.A. Const. Amends. 5, 14.

"Due process clause requires some kind of a hearing prior to discharge of employee who has a constitutionally protected property interest in his employment. U.S.C.A. Const. Amends. 5, 14.

"The principle that under the Due Process Clause an individual must be given an opportunity for a hearing before he is deprived of any significant property interest, requires 'some kind of hearing' prior to the discharge of an employee who has a constitutionally protected property interest in his employment. The need for some form of pretermination hearing . . .."

The other case before use arises on similar facts and followed a similar course. Respondent Richard Donnelly was a bus mechanic for the

Parma Board of Education. In August 1977, Donnelly was fired because he had failed an eye examination. He was offered a chance to retake the exam but did not do so. Like Loudermill, Donnelly appealed to the Civil Service Commission. After a year of wrangling about the timeliness of his appeal, the Commission heard the case.

> ". . . A divided panel of the Court of Appeals for the Sixth Circuit reversed in part and remanded. 721 F.2d 550 (1983). After rejecting arguments that the acts were barred by failure to exhaust administrative remedies and by res judicata--arguments that are not renewed here--the Court of Appeals found that both respondents had been deprived of due process.
>
> "[1] Respondent's federal constitutional claim depends on their having had a property right in continued employment. Board of Regents v. Roth, 408 U.S. 564, 576-

578, 92 S.Ct. 2701, 2708-2709, 33 L.Ed.2d 548 (1972); Reagan v. United States, 182 U.S. 419, 425, 21 S.Ct. 842, 845, 45 L.Ed. 1162 (1901). If they did, the State could not deprive them of this property without due process. See Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 11-12, 98 S.Ct. 1554, 1561-1562, 56 L.Ed.2d 30 (1978); Goss v. Lopez, 419 U.S. 565, 573-574, 95 S.Ct. 729, 735-736, 42 L.Ed.2d 725 (1975).

"[2] Property interests are not created by the Constitution, 'they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law . . .."

Board of Regents v. Roth, supra, 408 U.S., at 577, 92 S.Ct., at 2709.

. . ..

"[3] In light of these holdings, it is settled that the 'bitter with

the sweet' approach misconceives the constitutional guarantee. If a clearer holding is needed, we provide it today. The point is straightforward: the Due Process Clause provides that certain substantive rights -- life, liberty, and property -- cannot be deprived except pursuant to constitutionally adequate procedures. . . .. The right to due process 'is conferred, not by legislative grace, but by constitutional guarantee. While the legislature may elect not to confer a property interest in [public] employment, it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards.' Arnett v. Kennedy, supra, 416 U.S., at 167, 94 S.Ct. at 1650, . . .;"

[4.5] An essential principle of due process is that a deprivation of

life, liberty or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case.' Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed.865 (1950). We have described 'the root requirement' of the Due Process Clause as being 'that an individual be given an opportunity for hearing before he is deprived of any significant property interest.' Boddie v. Connecticut, 401 U.S. 371, 379, 91 S.Ct. 780, 786, 28 L.Ed.2d 113 (1971) (emphasis in original); see Bell v. Burson, 402 U.S. 535, 542, 91 S.Ct. 1586, 1591, 29 L.Ed.2d 90 (1971). This principle requires 'some kind of a hearing' prior to the discharge of an employee who has a constitutionally protected property interest in his employment. Board of Regents v. Roth, 408 U.S., at 569-570, 92 S.Ct., at 2705; Perry v. Sinderman, 408 U.S. 593, 599, 92 S.Ct.

2694, 2698, 33 L.Ed.2d 570 (1972). As we pointed out last Term, this rule has been settled for some time now. Davis v. Scherer, 468 U.S. _____, _____,n. 10, 104 S.Ct. 3012, ____, n. 10, 82 L.Ed.2d 139 (1984); id., at _____, _____, 104 S.Ct., at _____ . . . .

". . .. Here, the pretermination hearing need not definitely resolve the propriety of the discharge. It should be an initial check against mistaken decisions -- essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action. See Bell v. Burson, 402 U.S., at 540, 91 S.Ct., at 1590.

". . .. At some point, a delay in the post-termination hearing would become a constitutional violation. See Barry v. Barchi, 443 U.S., at 66, 99 S.Ct., at 2650. . . . ..

". . .. Justice BRENNAN, concurring in part and dissenting in part.

"Today the Court puts to rest any remaining debate over whether public employers must provide meaningful notice and hearing procedures before discharging an employee for cause. As the Court convincingly demonstrates, the employee's right to fair notice and an opportunity to 'present his side of the story' before discharge is not a matter of legislative grace, but of 'constitutional guarantee.' Ante, at 1493, 1496. This principle, reaffirmed by the Court today, has been clearly discernible in our 'repeated pronouncements' for many years. See Davis v. Scherer, 468 U.S. ___, _____, 104 S.Ct. 3012, _____, 82 L.Ed.2d 139 (1984) . . .."

Cleveland Bd. of Educ. v. Loudermill, (1985) 470 U.S. ___ [84 L.Ed.2d 494, 105 S.Ct. 1487].

As has been stated in prior cases before

the Court, collateral estoppel was never intended to prevent any person from litigating in the Federal court when that litigant has not had his "full and fair opportunity" to litigate his issue in an earlier case.

The following are some excerpts from Allen v. McCurry (1980) 66 L Ed 2d 308; 101 S.Ct. 441:

Opinion of the Court

> "But noting that Stone v. Powel, supra, barred McCurry from federal habeas corpus relief, and invoking 'the special role of the federal courts in protecting Civil Rights', 505 F.2d at 799, the courts concluded that Section 1983 suit was McCurry's only route to a federal forum for his constitutional claim and directed the trial court to allow him to proceed to trial unencumbered by collateral estoppel.
>
> "Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of

the issue in a suit on a different cause of action involving a part to the first case.

Montana v. United States, 440 U.S. 147, 153.

"But one general limitation the Court has repeatedly recognized is that the concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a 'full and fair opportunity' to litigate that issue in the earlier case.

Montana v. U.S. supra, at 153;

Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, at 328-329.

This plaintiff did not have a 'full and fair opportunity' to litigate the issue and the question of the constitutionality of Section 33 of the Administrative Code."

The following are some excerpts from Montana v. United States, 440 U.S. 147-164

(1979):

"To determine the appropriate application of collateral estoppel in the instant case necessitates three further inquiries: first, whether the issues presented by this litigation are substantially the same as those resolved against the United States in Kiewit 1; second, whether controlling facts or legal principles have changed significantly since the state-court judgment; and finally, whether other special circumstances warrant an exception to the normal rules of preclusion. (The court is in error in using collateral estopped against plaintiff).

"It is of course true that changes in facts essential to a judgment will render collateral estoppel inapplicable in a subsequent action raising the same issues. See e.g. **United States v. Certain Land at Irving Place & 16th Street**, 415 F.2d

265, 269; (CA2 1969);

Metcalf v. Commissioner, 343 F.2d (CA 1 1965);

Alexander v. Commissioner, 224 F.2d 788, 792-793 (CA5 1955)."

The County of Los Angeles condones and practices racism. See Excerpts of the Records, pp. 35-40. You will also see that some of the State Courts use a double standard when they rule on a Black person's case and a white person's case. The Courts go beyond the limit of the law to see that a white litigant has a full and fair opportunity to litigate the issues.

Judge DAVID KENYON's ORDER RE COURT GUIDELINES AND TRIAL PREPARATION would supersede the Defendants' illegal Motion to Dismiss. See Page 4 of Excerpts of Records.

In the Addendum to the Brief, on pages 32-35, Appellant proves his contention that he has a property interest to continue employment as a public employee, accrued vacation time and accrued sick time.

Circuit Judges CANBY, WIGGINS, and

O'SCANNLAIN made it clear in their Memorandum filed March 31, 1989, that Appellant appeals are timely. They did not make any negative statement that would prevent Appellant from going to trial by jury to hear the case based on the merit of the case.

I am going to cite some excerpts from the following cases concerning 42 U.S.C. 1983 City of West Branch, Michigan, et al., 466 U.S. 284:

> "The very purpose of Sec. 1983 was to interpose the federal court between the State and the people, as guardian of federal rights to protect the people from unconstitutional action under color of State law."

In Migra v. Warren City School District Board of Education, et al., 465 U.S. 75 (1984) the Court concluded that because a Sec. 1983 suit was respondent's only route to a Federal forum for his Constitutional claim, and because Sec. 1983's underlying purposes were to provide a Federal cause of action in situations where

State courts were not adequately protecting individual rights, the respondent should be allowed to **proceed to trial in Federal Court unencumbered by Collateral Estoppel**.

In Mitchum, dba Book Mart v. Foster, et al., 407, U.S. 225, 242 (1972), Section 1983, originally Sec. 1 of Civil Rights Act of 1871, 17 Stat. 13, it was modeled on Sec. 2 of the Civil Rights Act of 1866, 14 Stat. 27 and enacted for the express purpose of "enforc[ing] the provision of Fourteenth Amendment, 17 Stat. 13."

Proponents of the legislation noted that the State courts were being used to harass and injure individuals, either because the State courts were powerless to stop deprivation or were in league with those who were bent upon abrogation of federally protected rights.

In Paiviz Karim-Panaki v. Los Angeles Police Department, et al., 839 F.2d 621 (1988), in this Circuit a claim of municipal liability under Sec. 1983 is sufficient to withstand a motion to dismiss "even if claim is based on nothing more than a bare allegation that the

individual officer's conduct conformed to official policy, custom, or practice." 797 F. 2d 743, 747 (9th Cir. 1986).

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the following reasons:

This Petition presents an issue which conflicts with this Court's repeated decisions. The Opinion Below conflicts with previous decisions and some of its own decisions.

42 U.S. Section 1983

In reviewing the legislative history of Section 1983 Monroe v. Pope, supra, the Court inferred that Congress had intended a federal remedy in three[two] circumstances: (1) where the state procedure law was inadequate to allow full litigation of a Constitutional claim, and (2) state procedure law, though adequate in theory, was inadequate in practice. 365, at 173-174. In short, the federal courts could step in where the state courts were unable or unwilling to protect federal rights.

The Opinion Below of the Ninth Circuit creates a conflict among the Circuits with

regard as to when the use of collateral estoppel and res judicata should be applicable in a case. Montana v. United States, 440 U.S. 147-164 (1979).

It is of course time that change in the facts essential to a judgment will render collateral estoppel inapplicable in a subsequent action raising the same issues.

The Ninth Circuit decision is also in conflict with Cleveland Bd. of Educ. v. Loudermill (1985) 470 U.S. - 84 L.Ed. 2d. 494, 105 S.CT. 1487

As has been stated in prior cases before the Court, collateral estoppel was never intended to prevent any person from litigating in the federal courts when that litigant has not had his "full and fair opportunity" to litigate his issue in an earlier case. Brown v. Felsen (1979) 442 U.S. 127; 131.

COURT'S OPINION

For the sake of repose, res judicata shields the fraud and the cheats as well as the honest person. It therefore is to be invoked only after careful inquiry.

The judgment in this Plaintiff's case is tainted with undue means, fraud, deceit, malicious prosecution, malicious intent, racism, violation of due process rights and wrongful discharge.

If the federal courts had been informed that the statute they used for the wrongful termination had been ruled unconstitutional, their decision should have been different. The statute, even if it had been legal, could not legally be used to terminate a 17-year Civil Service employee. (Incredible.)

A great injustice has been done to this Petitioner because of his race.

Our Constitutional laws are supposed to be colorblind. We are not in South Africa.

In addition to the above, the Petitioner's rights have been violated by judicial misconduct and violation of professional conduct. A complaint has been filed with the California State Bar against Halvor S. Melom; County Counsel De Witt W. Clinton and Donovan M. Main.

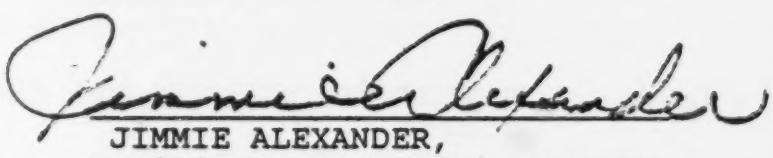
CONCLUSION

Certiorari should issue to review the judgment and Opinion of the Court of Appeals in this matter.

If this Court elects not to address the issues presented in this Writ at the present time, it is requested that the Writ issue and the matter be remanded to the Court of Appeals for re-determination in light of this Court's Opinion in Montana v. United States, 440 U.S. 147-164 (1979) and Anderson v. City of Bessemer City N.C. 105 S.Ct. 1504 (1985)

DATED: September 3, , 1991.

Respectfully submitted,



JIMMIE ALEXANDER,
Petitioner In Propria Persona.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JIMMIE ALEXANDER, Plaintiff-Appellant, v. COUNTY OF LOS ANGELES and THE LOS ANGELES COUNTY CIVIL SERVICE COMMISSION, Defendants-Appellees.	C.A. No. 89-55983 D.C. No. CV 89-2848-KN MEMORANDUM*

On Appeal From The United States District Court
for the Central District of California
David V. Kenyon, District Judge, Presiding

Argued and Submitted October 2, 1990
Pasadena, California

Before: BOOCHEVER, BEEZER and TROTT, Circuit Judges.

Jimmie Alexander appeals pro se the district court's dismissal of his civil rights action against Los Angeles County and the County Civil Service Commission. We affirm.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

APPENDIX A

On May 11, 1989, Alexander filed a complaint in the Central District of California. He alleged he was discharged from employment with the County of Los Angeles on September 6, 1977 because of his race, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et. seq. He also alleged that the absence of a pretermination hearing deprived him of his right to due process, in violation of 42 U.S.C. §1983. The district court, on defendants' motion for summary judgment, dismissed the complaints on the ground of res judicata. The court also sanctioned Alexander for relitigating claims previously rejected. Finally, the court instructed the Clerk of the Court not to accept any more filings from Alexander without the court's prior approval. Alexander appeals.

Alexander has raised almost identical claims against the same defendants in previous state and federal lawsuits. See Alexander v. Los Angeles County Civil Service Comm'n, No. C-251-961 (Cal. Sup. Dec. 7, 1978), aff'd, No. 56626 (Cal. Ct. App. n.d.), aff'd, (Cal.

Jan. 30, 1980), cert. denied, 447 U.S. 924 (1980); Alexander v. Los Angeles County, No. CV 82-3834-KN (C.D. Cal. Oct. 8, 1982), aff'd without op., 722 F.2d 744 (9th Cir. 1983), cert. denied, 469 U.S. 822 (1984); Alexander v. County of Los Angeles, No. CV 87-7773-KN (C.D. Cal. Apr. 29, 1988), aff'd, No. 88-6026 (9th Cir. Mar. 31, 1989). A final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been raised in the action. Federal Dept. Stores v. Moitie, 452 U.S. 394, 398 (1981); see also Sidney v. Zah, 718 F.2d 1453, 1459 (9th Cir. 1983) ("[E]xceptions to claim preclusion are narrow."). The district court's order of dismissal is affirmed. Defendants' request for sanctions on appeal is denied.

AFFIRMED.

FILED AUG 18,1989
Clerk, U.S. District Court
Central District ofCalifornia
by /s/ E

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JIMMIE ALEXANDER, Plaintiff, v. COUNTY OF LOS ANGELES, et al., Defendant.	)	CV 89-2848 KN ORDER Re Defendants' Motion to Dismiss **THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d)**

The Court, having received and considered defendants' motion to dismiss and the papers related thereto, having received no opposition from plaintiff, and having determined that this matter is appropriate for resolution without oral argument, HEREBY GRANTS defendants' motion.

On May 11, 1989, Jimmie Alexander filed his complaint in this action, alleging: 1) that he was discharged from employment with the County of Los Angeles on September 6, 1977, because of his race, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq.;

and 2) that the absence of a pretermination hearing prior to his discharge deprived him of his right to due process, in violation of 42 U.S.C. §1983.

This is the third such complaint which Mr. Alexander has filed in this Court. His first case, CV 82-3834 KN, was dismissed on October 8, 1982, with prejudice, on res judicata grounds, as the state superior and appellate courts had found that plaintiff was not discharged but had impliedly resigned and was therefore not entitled to a hearing as a matter of right. On April 29, 1988, plaintiff's second complaint, CV 87-7773 KN, was dismissed on the ground that plaintiff failed to effect proper service over defendants pursuant to Federal Rule of Civil Procedure 4(j). Both of these orders were affirmed on appeal.

Plaintiff's new complaint, although somewhat unclear, seems to be based on two factors: 1) that, subsequent to the prior rulings in related cases, Section 33 of the Los Angeles County Administrative Code was held unconstitutional, Zike v. State Personnel Board,

145 Cal. App. 3d 817 (1983); and 2) defense counsel acted fraudulently and unprofessionally in not bringing Zike to the attention of the Ninth Circuit on rehearing.

Defendants have now filed a motion to dismiss the complaint, with prejudice, on the ground that plaintiff's claims are barred by the principles of res judicata and collateral estoppel. Plaintiff has not submitted an opposition.

A. Res Judicata

The Court's October 8, 1982, Order stated that "plaintiff is collaterally estopped from contending that he was terminated because of his race in violation of Title VII . . . and that Section 33 of the Los Angeles County Administrative Code is unconstitutional because it does not provide a hearing as a matter of right in violation of his due process rights." Order, at 1. Plaintiff's complaint was therefore dismissed with prejudice. The Ninth Circuit affirmed on November 3, 1983, and the Supreme Court denied plaintiff's petition for

certiorari on October 1, 1984. Plaintiff's claims are estopped by both the prior state and federal litigations, which were decisions on the merits.

Plaintiff's reliance on Zike is misplaced. In that case, the court of appeal held that Cal. Gov't Code §19503 was unconstitutional as applied to plaintiff Zike. 145 Cal. App. 3d 817, 822-23. The court specifically based its ruling on the presence of a factual dispute regarding whether plaintiff's absence was authorized by the appropriate individuals. Id. at 823. The court went on to state that, given the harshness of §19503, its application should be limited to those situations where the absence without leave is admitted or where the employer reasonably believes an abandonment has occurred. Id. at 823-24. This decision, by a court of the same level as that which affirmed the superior court ruling in Mr. Alexander's case, does not supersede the res judicata effects of the earlier rulings. Even if it did, the decision is limited to its facts, and a re-examination of the merits of plaintiff's complaint does not

seem warranted.

B. Sanctions

Defendants request that the Court award sanctions against plaintiff for persistently relitigating claims previously considered and rejected by the courts. The Court believe that sanctions are appropriate. Plaintiff was advised of this possibility in the Court's April 29, 1988 Order. Although the dismissal in that case was not an adjudication on the merits, the Court warned plaintiff that "the re-filing of claims previously considered and rejected by the courts may provide the basis for a sanctions award." Order, at 7.

Therefore, the Court ORDERS that plaintiff should pay to defendants sanctions in the amount of the reasonable attorneys' fees incurred in bringing this motion. Defendants should submit a declaration specifying such fees, and a proposed order, within 14 days hereof.

The Court also believes that defendants' alternative request is appropriate. Plaintiff should not file any additional complaints, based

on claims already adjudicated, against these defendants, without prior approval of the Court. The Clerk of the Court is instructed not to accept any future complaints filed by plaintiff against these defendants, without such prior approval.

IT IS SO ORDERED.

DATED: August 17, 1989

/s/ DAVID V. KENYON
DAVID V. KENYON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JIMMIE ALEXANDER, Plaintiff, v. COUNTY OF LOS ANGELES, et al., Defendant.	)	CV 89-2848 KN (Kx) ORDER RE COURT GUIDELINES AND TRIAL PREPARATION

This case has been assigned to the calendar of Judge David V. Kenyon. The Court expects compliance with the Local Rules and the Federal Rules of Civil Procedure. NON-COMPLIANCE MAY LEAD TO THE IMPOSITION OF SANCTIONS, WHICH MAY INCLUDE THE STRIKING OF PLEADINGS AND ENTRY OF JUDGMENT OR DISMISSAL OF THE ACTION.

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FILED APR 16, 1991 - Clerk, U.S. Court of Appeals

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JIMMIE ALEXANDER,	)	C.A. No. 89-55983
	)	
Plaintiff-Appellant,	)	D.C. No. CV 89-2848-KN
	)	
v.	)	
	)	
COUNTY OF LOS ANGELES and THE LOS ANGELES COUNTY CIVIL SERVICE COMMISSION,	)	ORDER
	)	
Defendants-Appellees.	)	

Before: BOOCHEVER, BEEZER and TROTT, Circuit Judges

The panel has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no judge in active service has requested to vote to hear the matter en banc.

Pursuant to Rule 35(b) of the Federal Rules of Appellate Procedure, the petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

APPENDIX C

AMENDMENT XIV TO THE UNITED STATES CONSTITUTION

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are Citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process law, nor deny to any person within its jurisdiction the equal protection of the laws."

CERTIFICATE OF SERVICE

On October 10, 1991, I served the attached documents entitled, **PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**, on the interested parties in this action, by depositing two copies in a sealed envelope, postage prepaid, in the United States mail, addressed to the following:

DeWITT W. CLINTON, County Counsel, Steven L. Houston, 648 Hall of Administration, Los Angeles, CA 90012

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 10 day of October 1991, at Los Angeles, California.

Jimmie Alexander

JIMMIE ALEXANDER - Declarant